



#4 Appeal Brief
S. E. Imman (1)
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appeal No. _____

Application No.: 09/840,278
Filing Date: April 23, 2001
Applicant: Pangerc et al
Group Art Unit: 3727
Examiner: Stephen J. Castellano
Title: STORAGE CONTAINER
Attorney Docket: 0275Y-000357

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APPELLANTS' BRIEF

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BRIEF ON BEHALF OF APPELLANT

This is an appeal from the action of the Examiner dated November 5, 2002, finally rejecting claims 2-13, 16, and 18-21 and objecting to claim 14. Copies of the claims appealed are attached as an appendix.

I. REAL PARTY IN INTEREST

The real party in interest in the present application is Black & Decker Inc. (Assignee).

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF ALL CLAIMS

Claims 2-13, 16, and 18-21 stand finally rejected.

Claim 14 stands objected.

Claim 15 has been allowed.

Claims 1, 17, and 22-26 have been cancelled.

IV. STATUS OF AMENDMENTS

All of the amendments have been entered in this application.

V. SUMMARY OF THE INVENTION

The storage container [item 10, Fig. 1; para. 34] in accordance with this invention includes a base portion [item 12, Fig. 1; para. 34] and a cover portion [item 14, Fig. 1; para. 34] hingedly attached to the base 12. A pair of transparent cover plates or lids [items 16, 18, Fig. 1; para. 34] are provided for selectively enclosing the storage area defined by the base 12 and cover 14, respectively. The transparent lids 16, 18 are each provided with a slidable latch [items 70, 70', Figs. 1 and 6; paras. 35, 43, 44] mounted to the respective lid 16, 18 for engagement with a respective one of the base 12 and cover 14. The latches 70, 70' are aligned such that both lids 16, 18 must be secured in the locked position prior to properly closing the storage container [see para. 44]. The base portion 12 and cover portion 14 are provided with circumferential walls [item 26, 40, Fig. 1; para. 35] and at least one upright divider wall [items 46, 56, Fig. 2B; items 64, 66, Fig. 3B; paras. 36, 37] having a series of tabs [item 48, Fig. 2B; items 68, Fig. 3B; paras. 36, 37]. At least one removable spacer [item 52, Figs. 1, 5; paras. 36, 37, 42] is adapted to selectively interfit with the tabs 48, 68 provided on the circumferential walls 26, 40 and the divider walls 45, 56; 64, 66 of the base 12 and cover 14. As illustrated in Figure 5, the spacers 52 include a first end section, a middle section, and a second end section with the first and second end sections having larger cross sections than the middle section and include recessed portions defined between fingers 50 in the end faces thereof for receiving at least one of the series of tabs 48, 68, as best illustrated in Figure 1.

As illustrated in Figure 4B, the inner lids 16, 18 include a raised edge [item 62, Fig. 4B; para 40.1] for providing increased structural strength and rigidity to the lids for resisting twisting and fatigue associated with repeated manipulation of the cover plates.

VI. ISSUES

- A. Whether the combination of Daneshvar '818 and Ratcliff '595 establish a prima facie case of obviousness under 35 U.S.C. § 103(a), with respect to claims 2-7 and 18
- B. Whether the combination of Daneshvar '818, Ratcliff '595, and Takama '710 establish a prima facie case of obviousness under 35 U.S.C. § 103(a), with respect to claims 6-8, 19, and 20
- C. Whether the combination of Daneshvar '818, Ratcliff '595, and Petruzzi '925 establish a prima facie case of obviousness under 35 U.S.C. § 103(a), with respect to claim 9
- D. Whether the combination of Takama '710, Spencer '058, and Daneshvar '818 establish a prima facie case of obviousness under 35 U.S.C. § 103(a), with respect to claims 10, 11, and 16
- E. Whether the combination of Takama '710, Spencer '058, Daneshvar '818, and Ratcliff '595 establish a prima facie case of obviousness under 35 U.S.C. § 103(a), with respect to claims 12 and 13
- F. Whether Ratcliff '595 establishes a prima facie case of obviousness under 35 U.S.C. § 103(a), with respect to claim 21

VII. GROUPING OF CLAIMS

Claims 2-9 and 18-20 stand or fall together as set forth in sections A-C of the following arguments.

Claims 10-12 and 16 stand or fall together as set forth in section D of the following arguments. (Claim 12 is specifically discussed in section E of the attached arguments.)

Claim 13 stands or falls by itself as discussed in section E of the following arguments.

Claim 21 stands or falls by itself as discussed in section F of the following arguments.

VIII. ARGUMENTS

A. The Combination Of Daneshvar '818 In View Of Ratcliff '595 Do Not Render Obvious The Invention Of Claims 2-7 and 18

At the outset, Applicants note that independent claim 4 includes the limitations of:

“a base portion” and “a cover portion . . . connected to said base portion” as well as “a first inner lid portion . . . connected to said base portion and said cover portion; a second inner lid portion . . . connected to said base portion and said cover portion; and wherein said first and second inner lid portions include a first and second latch, respectively, said first and second latches each being slidable between a locked position for engaging said first and second inner lid portions to a respective one of said base portion and said cover portion and an unlocked position for disengaging said first and second inner lid portions from said respective base and cover portions.”

Applicants submit that neither Daneshvar '818 nor Ratcliff '595 disclose first and second lid portions each connected to the base and cover portion and including a first and second latch, respectively being slidable between a locked position for engaging the first and second inner lid portions to a respective one of the base portion and the cover portion, as claimed. In particular, the disclosure of Daneshvar provides two plastic walls A and B, both of which are capable of being attached to the lid 2 via snaps 29, 33 that hold the plastic walls A and B together (see col. 3, lines 43-45). Daneshvar '818 does not disclose either of the plastic walls A, B being engagable to the base by a latch. Furthermore, Daneshvar '818 fails to disclose a slidable latch for each lid, as claimed.

FIG. 9 of Daneshvar '818

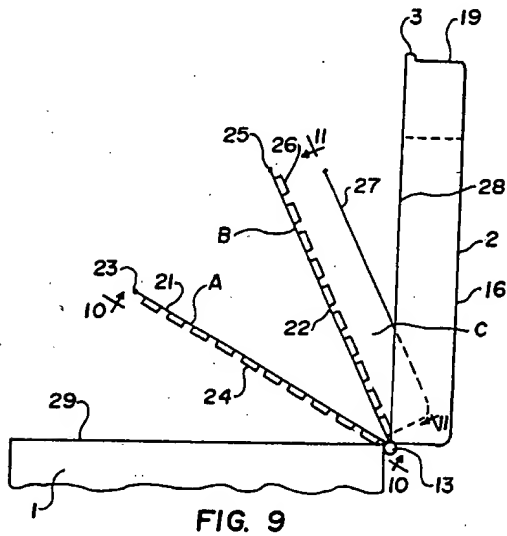
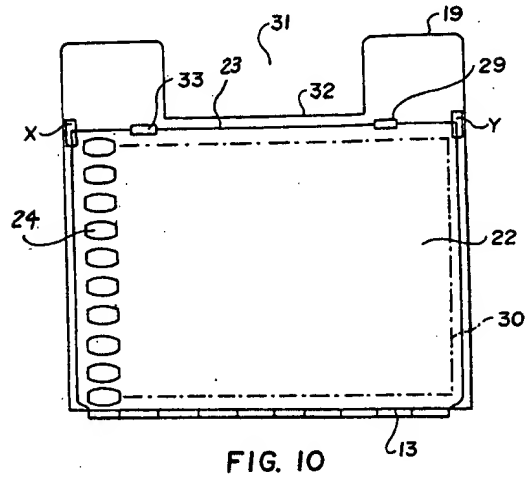


FIG. 10 of Daneshvar '818



Applicants further submit that Ratcliff '595 discloses two lids 51, 53 and include only a single rotatable latch 55 for engaging both lids 51, 53 to the base/tray 31. Furthermore, the rotatable latch 55 is mounted to the base/tray and not to either of the lids 51, 53, as claimed.

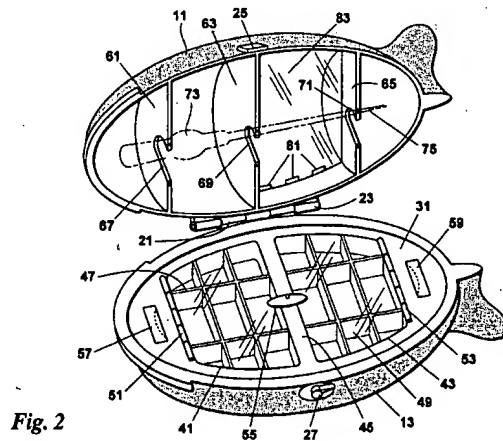


FIG. 2 of Ratcliff '595

Accordingly, Applicants submit that neither Daneshvar '818 nor Ratcliff '595 teach or suggest first and second lid portions including respective first and second latches for engaging the lids to a respective one of the base and cover portions, as claimed. Thus,

the combination of references fail to teach or suggest all of the elements of the claim, as set forth. Therefore, the combination of Daneshvar '818 in view of Ratcliff '595 is improper. Accordingly, Applicants request that this Board overturn the Examiner's rejection of claims 2-7 and 18.

B. The Combination Of Daneshvar '818 In View Of Ratcliff '595, And Further In View Of Takama '710 Do Not Render Obvious The Invention Of Claims 6-8, 19, And 20

With regard to the rejection of claims 6-8, 19, and 20 as being rejected under 35 U.S.C. § 103(a) as being unpatentable over Daneshvar in view of Ratcliff as applied to claim 6 above, and further in view of Takama, Applicants submit that this rejection does not remedy the deficiencies of Daneshvar in view of Ratcliff as applied to claim 4, as discussed above. In particular, Takama fails to disclose first and second lid portions including respective first and second latches for engaging the lids to a respective one of the base and cover portions, as claimed. Therefore, the rejection of these claims should be withdrawn for the same reasons as the rejection of claim 4, as discussed above.

C. The Combination Of Daneshvar '818, Ratcliff '595, And Petruzzi '925 Do Not Render Obvious The Invention Of Claim 9

With regard to the rejection of claim 9 as being unpatentable over Daneshvar in view of Ratcliff as applied to claim 4 above, and further in view of Petruzzi, Applicants submit that this rejection does not remedy the deficiencies of Daneshvar in view of Ratcliff as applied to claim 4, as discussed above. In particular, Petruzzi fails to disclose first and second lid portions including respective first and second latches for engaging the lids to a respective one of the base and cover portions, as claimed. Therefore, the rejection of claim 9 should be withdrawn for at least the same reasons as the rejection of claim 4, as discussed above.

D. The Combination Of Takama '710, Spencer Et Al '058, And Daneshvar '818 Do Not Render Obvious The Invention Of Claims 10, 11, And 16

With regard to claims 10 and 16, it is noted that each of these claims include limitations directed to:

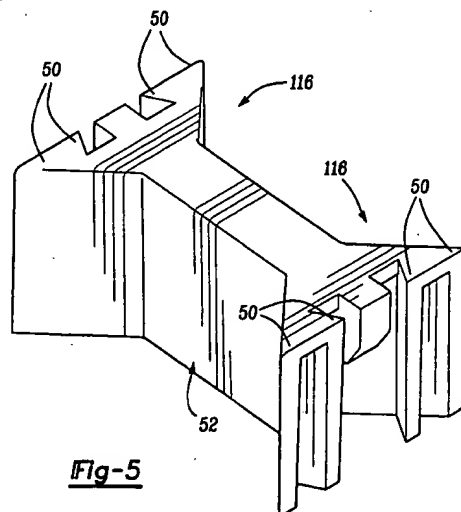
“a base portion;” and “a cover portion hingedly attached to said base portion, one of said base and cover portions including an inner side having a circumferential wall and at least one upright divider wall having a series of tabs extending therefrom, and at least one removable spacer adapted to selectively interfit with said tab of said circumferential wall and said divider wall, said spacer having a first end section, middle section, and second end section, said first and second end sections having larger cross sections than said middle section and include recessed portions in an end face thereof for receiving at least one of said series of tabs.”

Similarly, claim 16 includes limitations directed to a removable spacer having:

“a first end section, middle section, and second end section, said first and second end sections having a larger cross section than said middle section and include recessed portions in an end face thereof for receiving at least one of said series of tabs.”

Applicants refer to Figure 5 below which illustrates the spacer having first and second end sections having larger cross sections than the middle section and including the recessed portions (between reference numerals 50) which receive the tabs 48, 68, as illustrated in Figures 2B and 3B.

FIG. 5 of USSN 09/840,278



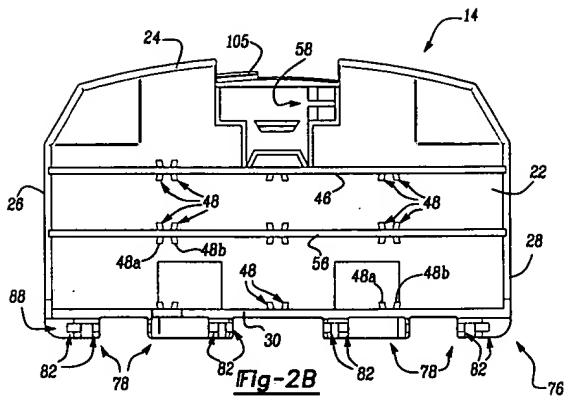


FIG. 2B of USSN 09/840,278

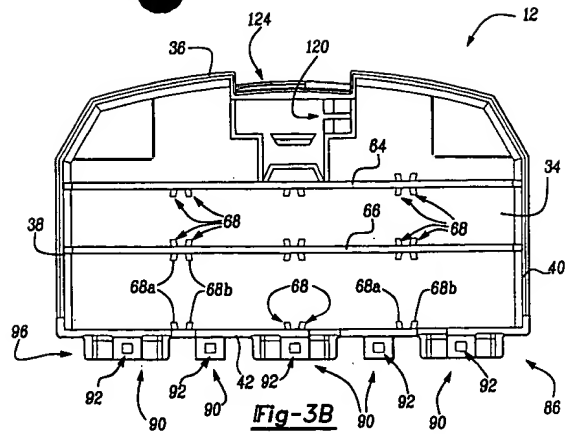
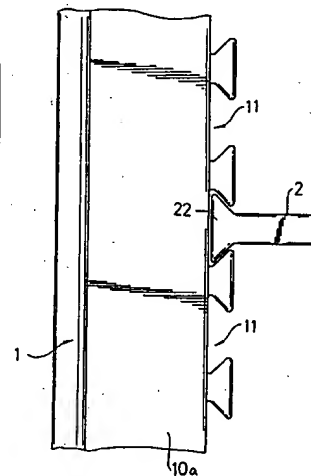


FIG. 3B of USSN 09/840,278

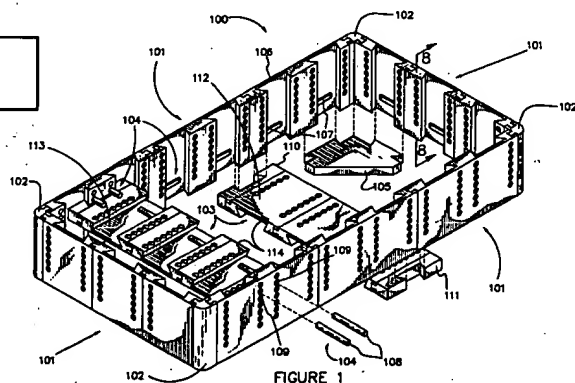
Applicants submit that Takama '710 in Figure 3 (reproduced below, discloses a separator 2 having an end portion 22 with a larger cross section than a middle section of the separator 2).

FIG. 3 of Takama '710



Similarly, Spencer et al '058 disclose panels for constructing an adjustable plate such as panel 105 having recessed dovetail sections for engaging with corresponding dovetail sections provided in the sidewall.

FIG. 1 of Spencer '058



However, there is no teaching or suggestion in either Takama or Spencer for providing recess portions (as shown in Spencer et al '058) in the very narrow end face of the separate 2 of Takama '710 for receiving at least one of a series of tabs as recited in the claim. Applicants submit that the dovetail grooves 11 of Takama '710 already provide the function of retaining the separators 2 in place. Therefore, the Examiner's proposed modification is not only unnecessary, it is done with impermissible hindsight. Accordingly, Applicants request that this Board overturn the rejection of claims 10, 11, and 16 since there is no proper teaching or suggestion for the Examiner's proposed modification.

E. The Combination Of Takama '710 In View Of Spencer et al '058, Daneshvar '818 And Ratcliff '595 Do Not Render Obvious The Invention Of Claims 12 And 13

With regard to the rejection of claims 12 and 13 as being unpatentable over Takama in view of Spencer and Daneshvar as applied to claim 10 above, and further in view of Ratcliff, Applicants submit that the rejection of claims 12 and 13 is insufficient for the same reasons as the rejection of claim 10, as discussed above. Therefore, these claims should be allowable for the same reasons as claim 10 as discussed above.

Furthermore, with regard to dependent claim 13, which depends from independent claim 10, Applicants note that this claim includes similar limitations to claim 4. Specifically, claim 13 includes "first and second inner lids hingedly connected to said base portion and said cover portion, said first and second inner lids each including a latch slidable between a locked position for engaging said first and second inner lid portions to said respective base and cover portions and an unlocked position." Accordingly, Applicants submit that claims 13 and 14 are allowable for at least the same reasons as claim 4 as discussed above, in view of the fact that Daneshvar '818 and Ratcliff '595 fail to teach or suggest the

claimed subject matter even when taken in combination with Takama '710 and Spencer et al '058.

F. Ratcliff '595 Does Not Render Obvious The Invention Of Claim 21

At the outset, Applicants note that claim 21 includes the limitation of:

“a base portion; a cover portion; and at least one inner lid hingedly connected to at least one of said base and cover portion, said at least one inner lid comprising; a body portion having opposite side edges, a base edge and a top edge, said body portion including a raised lip disposed on at least one of said opposite side edges and said top edge; and a latch coupled to said body and slidable between a locked position for engaging said at least one inner lid to one of said base and cover portion in an unlocked position.”

Applicants submit that Ratcliff '595 fails to disclose a latch coupled to the body of the lid and slidable between locked and unlocked positions. Instead, the latch 55 of Ratcliff is pivotally mounted to the tray 31 and is therefore not mounted to the body of the inner lid and is not slidable between a locked and unlocked position, as claimed. Applicants further submit that the Examiner has failed to cite any reference which discloses a raised lip on an inner lid, as claimed. In particular, Applicants note that the lip portion 62 disclosed in Figure 4B and described in paragraph [0040.1] added by amendment filed March 20, 2002, provides increased structural strength and rigidity to the cover plate 16, 18. Applicants submit that the Examiner's assertion that raised lips are well known is improper, since none of the prior art references teach or suggest a lid, as claimed, having such a raised lip. Therefore, Applicants request that this Board overturn the Examiner's rejection of claim 21.

IX. CONCLUSION

In view of the above presented discussion, Applicants believe that the pending claims are patentably distinguishable over the art cited by the Examiner. Accordingly, Applicants respectfully request that this Board reverse the final rejection of claims 2-14, 16, and 18-21.

The Examiner is authorized to charge Deposit Account No. 02-2548 the amount of \$320 for filing a brief in support of this appeal. Please charge any deficiency or credit any overpayment pursuant to 37 C.F.R. § 1.16 or § 1.17 to Deposit Account No. 02-2548. A duplicate copy of this page is enclosed.

Respectfully submitted,

Dated: _____

9-3-03

By: _____

Ryan W. Massey

Ryan W. Massey, Reg. No. 68,543
Attorney for Applicants

Harness, Dickey & Pierce, P.L.C.
P.O. Box 828
Bloomfield Hills, MI 48303
(248) 641-1600

Enclosures: Three (3) copies of Appellant's Brief

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APPENDIX

2. The storage container according to claim 4, wherein one of said base and cover portions includes a latch, said latch being slidable between a locked position and an unlocked position.

3. The storage container according to claim 4, wherein said first and second inner lid portions are symmetric.

4. A storage container comprising:

- a base portion having a first series of hinge sections;
- a cover portion having a second series of hinge sections connected to said base portion said base and cover portions being closeable defining an outer shell and an internal space;
- a first inner lid portion including a first end with a third series of hinge sections connected to said base portion and said cover portion;
- a second inner lid portion including a first end with a fourth series of hinge sections connected to said base portion and said cover portion; and

wherein said first and second inner lid portions include a first and second latch respectively, said first and second latches each being slidable between a locked position for engaging said first and second inner lid portions to a respective one of said base portion and said cover portion and an unlocked position for disengaging said first and second inner lid portions from said respective base and cover portions.

5. The storage container according to claim 4, wherein said first and second inner lid portions are transparent.

6. The storage container according to claim 5, wherein said base and said cover portions include at least one internal lateral divider wall having a series of locating tabs extending therefrom.

7. The storage container according to claim 6, further comprising at least one adjustable divider for selectively positioning between said locating tabs.

8. The storage container according to claim 7, wherein said adjustable divider includes a first and second side having a first and a second end, said first and second sides being flared outwardly at said first and second ends.

9. The storage container according to claim 4, wherein an outer side of said base and cover portions include recessed and extending portions such that the recessed portions of a first storage container cooperate to receive the extending portions of a second storage container to facilitate stackability.

10. A storage container comprising:

a base portion; and

a cover portion hingedly attached to said base portion, one of said base and cover portions including an inner side having a circumferential wall and at least one upright divider wall having a series of tabs extending therefrom, and at least one removable spacer adapted to selectively interfit with said tabs of said circumferential wall and said divider wall, said spacer having a first end section, middle section and second end section, said first and second end sections having larger cross sections than said middle section and include recessed portions in an end face thereof for receiving at least one of said series of tabs.

11. The storage container according to claim 10, wherein said at least one removable spacer is made from an elastomeric material.

12. The storage container according to claim 10, wherein one of said base and cover portion includes a latch, said latch slidable between a locked position and an unlocked position.

13. The storage container according to claim 10, further comprising first and second inner lids hingedly connected to said base portion and said cover portion, said first and second inner lids each including a latch slidable between a locked position for engaging said first and second inner lid portions to said respective base and cover portions and an unlocked position.

16. A storage container comprising:

a base portion;

a cover portion hingedly attached to said base portion, one of said base and cover portions including a wall structure including opposing walls having a series of tabs extending therefrom, and at least one removable spacer adapted to selectively interfit with said tabs of said opposing walls, said removable spacer being made from an elastomeric material, wherein said removable spacer has a first end section, middle section, and second end section, said first and second end sections having a larger cross section than said middle section and include recessed portions in an end face thereof for receiving at least one of said series of tabs.

18. The storage container of claim 6 wherein one pair of said series of locating tabs opposes a second pair of said series of locating tabs.

19. The storage container of claim 7 wherein said at least one adjustable divider includes a body having opposing end portions and a central portion, said central portion being substantially perpendicular to said at least one internal lateral divider wall in an installed position, said opposing end portions having complimentary slots formed thereon for slidably accepting one of said series of locating tabs in said installed position, said opposing end portions having walls extending at an obtuse angle from said central portion.

20. The storage container of claim 19 wherein said complimentary slots include first and second slots each having an inner wall extending from an outer edge of said opposing end portions, said inner wall of said first and second slot being substantially parallel to said central portion, said first and second slots further including an outer wall extending from said outer edge, said outer walls extending outwardly toward said walls of said opposing end portions.

21. A storage container comprising:

- a base portion;
- a cover portion; and
- at least one inner lid hingedly connected to at least one of said base and cover portion, said at least one inner lid comprising;
 - a body portion having opposite side edges, a base edge and a top edge, said body portion including a raised lip disposed on at least one of said opposite side edges and said top edge; and
 - a latch coupled to said body and slidable between a locked position for engaging said at least one inner lid to one of said base and cover portion and an unlocked position.